



Department
for Environment
Food & Rural Affairs

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www.defra.gov.uk

[email address of requester]
(by email only)

Our ref: RFI 6086
Date: 10 February
2014

Dear [requester name]

**REQUEST FOR INFORMATION: SUBMISSIONS IN RESPECT OF COST OF
COMPLIANCE WITH THE EIRS AND LOST INCOME**

Thank you for your request for copies of submissions for new burdens payments made from January 2010 to 11 December 2013 by

1. the Local Government Association (LGA), both collectively and on behalf of individual councils
2. individual councils

in respect of

- a) the costs of compliance with the Environmental Information Regulations (EIRs)
- b) the lost income pertaining to the councils' land charges service

We received your request on 11 December 2013. Please accept our apologies for the delay in responding. As you first sent your request to the Ministry of Justice (MoJ), we have been consulting them and other parties, and this has unfortunately led to some delay.

As you know, we have handled your request under the Freedom of Information Act 2000 (FOIA).

We enclose a copy of the information which can be disclosed, with appropriate redactions. The information relates to the original allocation of £11.4 million to local authorities under the New Burdens policy. The information comprises 26 emails or letters from a number of



local authorities in the period 2010-11.

We do not hold information received in the specified timeframe that deals solely with the cost of compliance with the EIRs in relation to new burdens payments. Some of the letters from local authority correspondents that we are disclosing refer to IT-related issues that will apply equally to the requirements of the Freedom of Information Act 2000 and other pressures on local government to introduce efficiencies and digital services.

The remainder of the information within scope of your request is being withheld as it falls under the exemptions in sections 40, 41 and 42 of the FOIA, which relate to personal information, information provided in confidence and legal professional privilege (LPP) respectively. This information comprises submissions from the LGA, sent either directly or through its legal advisers.

Section 40

We have redacted third-party personal data under section 40(2) of the FOIA, with the exception of the names and contact details of senior officials in public-facing roles, such as chief executives and leaders of councils and officials at government departments whose names are already publicly associated with these matters. Section 40(2) of the FOIA provides that personal data relating to third parties is exempt information if disclosure would breach the Data Protection Act 1998 (DPA).

We consider that disclosure of this information is likely to breach the first data protection principle in Schedule 1 to the DPA, which relates to the fair and lawful processing of personal data, in two ways. First, disclosure would not constitute 'fair' processing of the personal data. Second, disclosure would not satisfy any of the conditions for data processing set out in Schedule 2 to the DPA. The letters date from 2010-11, and in many cases it has not been possible to contact the original correspondent due to staff changes in the intervening years. Therefore we have concluded that information relating to staff other than those clearly in senior roles is exempt from disclosure.

Section 41

This exemption relates to information whose disclosure would result in an actionable breach of confidence. This applies where confidential information is obtained by a public authority in circumstances in which it has notice that the information is confidential. This applies to submissions from the LGA, either directly or through their legal representatives, which were either marked as confidential or connected with matters that were already being discussed confidentially. We have consulted the LGA and have been informed that the circumstances giving rise to a legal duty of confidence still apply and disclosure would prejudice their interests.

We are therefore applying this exemption in relation to various submissions from the LGA received in the timeframe you specified. This information was identified by the LGA or their legal advisers as confidential. It covers confidential discussions between the LGA and central government on the matter of the application of the new burdens policy. If this information is released, Defra would be exposed to an action for breach of confidence that, if brought, is likely to succeed.

Some of this information is also legally privileged and therefore also covered by the exemption in section 42.

Section 42

The exemption in section 42(1) applies to "information in respect of which a claim to legal professional privilege [...] could be maintained in legal proceedings". The LGA has provided to us on a restricted basis correspondence and documents which are subject to either legal advice privilege, litigation privilege, or both. The terms under which this information was shared mean that privilege has not been waived and the information therefore remains legally privileged.

Public interest arguments

The exemptions in sections 40 and 41 are "absolute", which means that the FOIA does not require us to balance the public interest in withholding the information against the public interest in disclosure. However, in applying the exemption in section 42 we have had to carry out this public interest test.

There is a strong general public interest in knowing that public bodies are relying on sound legal advice when making decisions. Transparency in decision making makes public bodies more accountable to the public.

However, legal professional privilege is a key element in the administration of justice. There is an inbuilt public interest in withholding information that is legally privileged in view of the weight attached to the confidentiality of such communications. There is correspondence in respect of litigation concerning the restitution of fees that were charged for searches of the Local Land Charges registers. Disclosure of legal advice has a high potential to prejudice a person's ability to defend its legal interests. It is not in the public interest for a body such as the Local Government Association to have its legal and financial position prejudiced by exposure of its legal position.

The litigation has not yet been resolved, and it would not be in the public interest for us to disclose the information requested until this matter has been concluded. We have

therefore determined that, in all the circumstances of the case, the information covered by the above exemption should be withheld.

In keeping with the spirit and effect of the FOIA, and in keeping with the government's Transparency Agenda, all information is assumed to be releasable to the public unless exempt. Therefore, the information released to you will now be published on www.gov.uk together with any related information that will provide a key to its wider context. Please note that this will not include your personal data.

I attach an annex giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter, please contact me.

Yours

Valerie Hope
Information Standards, Knowledge, Transparency and Resilience

T: 020 7238 4675

Annex A

Copyright

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Annex B

Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Mike Kaye, Head of Information Standards, Area 4D, Nobel House, 17 Smith Square, London, SW1P 3JR (email: requestforinfo@defra.gsi.gov.uk) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our website.

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

